It was conceded by the learned Deputy Public Prosecutor that though the charge was defective in that it was badly drafted it was not a nullity and that the appellant, as was clear from the course of the trial itself, was in no way prejudiced by the defective nature of the charge. With that view we are in complete agreement. We are satisfied that the charge, although it was defective, was abundantly clear to the appellant and that he was charged with, in effect, carrying on a public lottery, that is to say, a 10,000 characters lottery. We are quite satisfied that the appeal on this ground must fail.

The next ground of appeal taken was that there was no evidence of conscious knowledge of the lottery tickets or counterfoil book of tickets. That ground of appeal must necessarily be connected with the facts and the findings of fact by the learned Magistrate. The facts, as I have said, were that on his way to the police station, or at the police station itself, the appellant was seen by the police constables to meddle with his bicycle lamp and this book of tickets fell from it. It has been argued before us — and argued with some cogency — that, on the face of it, it is contrary to all reason and common sense that the appellant, in those circumstances, in the police station, should openly, or even surreptitiously, have attempted to take the tickets from the lamp. There is no doubt that there is some force and cogency in that argument. But it was a matter which, of course, was clearly before the learned Magistrate, and he found as a fact that he did not accept the allegation of the appellant that he was asked by the police constable to open the lamp. He found as a fact that the appellant consciously and of his own volition opened the lamp — presumably, with the object of taking out and concealing or throwing away the tickets. We are, of course, bound by that finding of fact. On those facts as found it must necessarily follow that the appellant, in opening the lamp and in attempting to take out the tickets, had conscious knowledge of possession of the tickets in that lamp. This ground of appeal must also fail.

The last point raised was the point as raised before us under the Schedule to the Certificate by which the appeal comes before us, that is to say, whether the evidence that the action of the appellant in meddling with the bicycle lamp at the police station was tantamount to and ought to be regarded as "evidence of a statement made in the course of a police investigation". The answer to that question appears to us, upon the facts as found by the learned Magistrate, quite clearly to be that the action of the appellant, consciously and of his own accord, in opening the lamp cannot conceivably fall within the provisions of section 113 of the Criminal Procedure Code, as being tantamount to a statement to a police officer in the course of an investigation. Indeed it would seem to us to be clearly contrary to common sense and logic that conduct of that kind by an accused person could possibly be held to be regarded in the same light as a statement made in the course of a police investigation. It was a voluntary and spontaneous act done by the appellant of his own accord and, on the facts as found by the learned Magistrate, was clearly without any prompting from the police constable. The answer, therefore, to the reference as it stands before us is in the negative.

For these reasons we are of the opinion that this appeal must be dismissed.

Appeal dismissed.

Solicitors: *Murugason & Co.*

CHUA LAI SENG v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) May 27, 1960]

[Penang — Criminal Appeal No. 10 of 1960]

Road Traffic — Licensing — Using vehicle for purpose other than it was licensed — Third party insurance — Road Traffic Ordinance, 1958, s.22(2), s.74.

The appellant appealed from his conviction by the learned Magistrate for using his motor-car contrary to sections 22(2) and 74 of the Road Traffic Ordinance. The main ground of appeal was that the Magistrate erred in law in holding that the licensing of a privately owned vehicle was limited to the carrying of passengers only and that he misdirected himself in holding that a vehicle licensed for a private purpose had become a goods vehicle for commercial purposes by reason of the fact that the appellant was carrying in that vehicle his own goods for sale by himself and not for sale or reward to any other person.

Held: the appellant used his private vehicle for the carriage of goods within the meaning of the Ordinance and as such he was saving himself from the substantially heavier tax that he would have to pay if the vehicle that he had been using had been licensed as a private carrier's vehicle.

Obiter: ". . . . the object of these particular sections of the Ordinance . . . . is twofold: to increase the revenue of the country by making it incumbent upon persons who wish to use their vehicles for the carriage of goods to pay a higher licensing fee for such a purpose and . . . . . to protect from unfair competition the legitimate interests of *bona fide* carriers of goods for reward or hire who have paid the higher licensing fees required for such a purpose."

MAGISTRATE'S CRIMINAL APPEAL.

Mrs. B. H. Oon for the appellant.

L. A. Massie (Deputy Public Prosecutor) for the respondent.

Rigby J. (delivering oral judgment): I am satisfied that this appeal must be dismissed. The appellant was convicted of using his motor car for a purpose other than the purpose for which the licence was granted, contrary to the provisions of section 22(2) of the Road Traffic Ordinance, 1958. He was further convicted under the 2nd charge of using the vehicle in circumstances in which there was not in force in relation to the use of the motor vehicle a policy of insurance in respect of third party risks, contrary to the provisions of section 74 of the Road Traffic Ordinance. The nature of the 2nd charge and the conviction arose really

as a direct result of the commission of the offence in respect of the 1st charge.

The appellant is a fruit and vegetable vendor. On the day in question he was stopped by the police with his motor vehicle filled to capacity with quantities of fruit — bananas and water melons. It was abundantly clear — nor is it, indeed, in any way disputed — that he was carrying the fruit for the purpose of his trade as a fruit and vegetable vendor. The vehicle which he was driving at the time and in which the fruit was being carried was, in fact, licensed as a private passenger vehicle. The appellant's certificate of insurance was also produced in evidence. It provided as follows :—

" **Limitations as to Use:**

Use only for social, domestic and pleasure purposes and for the Insured's business. The Policy does not cover use for hire or reward, racing, pace-making, reliability trial, speed-testing, the carriage of goods other than samples in connection with any trade or business or use for any purpose in connection with the motor trade."

Under that clause, whilst the vehicle may properly be used by the Insured in connection with his business, the policy expressly includes the carriage of goods other than samples in connection with such trade or business. The important point is that while he may, in general, use the car for the purposes of his business he must not carry in the car goods other than samples for use in connection with that business.

The main ground of appeal is that the learned Magistrate erred in law in holding that the licensing of a privately owned vehicle was limited to the carrying of passengers only and that he misdirected himself in holding that a vehicle licensed for private purposes had become a goods vehicle for commercial purposes by reason of the fact that the appellant was carrying in that vehicle his own goods for sale by himself and not for sale or reward to any other person.

Now the first point that is apparent from the evidence is that the vehicle was, in fact, registered and licensed as a private passenger vehicle. Goods are defined in section 2 of the Road Traffic Ordinance as :—

" Anything.....carried on or in a motor vehicle for the purposes of any trade or business....."

Then follow a number of exceptions which are irrelevant for consideration in this case. The last of those exceptions exempts from the definition of goods for the purposes of the Ordinance :—

" Article carried by a person on or in the vehicle for use in the exercise of his trade, business or profession and not for sale."

A goods vehicle is defined in the Ordinance as :—

" (a) any motor vehicle constructed or adapted for use for the carriage of goods; and

(b) any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers;

but does not include a private motor car drawing a trailer for purposes unconnected with trade or business."

Section 98 of the Ordinance provides that :—

" Subject to the provisions of this Part of the Ordinance no person shall use a motor vehicle, or cause or permit a motor vehicle to be used, for the carriage of goods unless there is in force in respect of such vehicle a valid carrier's licence granted under this Part of this Ordinance....."

The different types of carrier's licences are set out in section 100 and a private carrier's licence is therein referred to as a "C" Licence. Under that section a "C" Licence "shall entitle the holder thereof to use the authorised vehicle for the carriage of goods for or in connection with any trade or business carried on by him...." It seems to me abundantly clear that the appellant was, in fact, using his private vehicle for the carriage of goods within the meaning of the Ordinance, and that by so doing he was saving himself from the substantially heavier tax that he would have had to pay if the vehicle that he was then using for that purpose — which was, of course, a private passenger vehicle — had, in fact, been licensed as a private carrier's vehicle. As I have pointed out previously the object of these particular sections of the Ordinance, as I understand them, is two-fold: to increase the revenue of the country by making it incumbent upon persons who wish to use their vehicles for the carriage of goods to pay a higher licensing fee for such a purpose and, by the same token, to protect from unfair competition the legitimate interests of *bona fide* carriers of goods for reward or hire who have paid the higher licensing fee required for such a purpose. In my view, the learned Magistrate was entirely correct in the grounds of decision he has given as to why he convicted the appellant in this case upon both the charges preferred against him, and the appeal in respect of both charges must accordingly be dismissed.

As to the matter of sentence. Although I appreciate that this is essentially a matter for the trial Court, the sentences, in my view, were unduly heavy having regard to the fact that as a necessary consequence of the conviction the appellant was disqualified from holding or applying for a driving licence for one year. The fines are accordingly reduced from $300 on the 1st charge and $150 on the 2nd charge to $100 and $50 respectively.

Appeal dismissed.

Solicitors: *Lim, Lim & Oon.*